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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,487	06/28/2001	Klaus Dillinger	21795	5915
S35 7590 11/02/2004 THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			EXAMINER SHAW, SHAWNA JEANNINE	
			ART UNIT 3737	PAPER NUMBER

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/894,487	Applicant(s) DILLINGER ET AL.	
	Examiner Shawna J. Shaw	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06282001</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Applicant's election with traverse of Group I in the reply filed on 07/23/2004 is acknowledged. The traversal is on the ground(s) that the apparatus could not be used with a different method and the method could not be used with a different apparatus because the issue of treatment, diagnosis or treatment combined with diagnosis is irrelevant. This is not found persuasive because the issue of treatment or treatment combined with diagnosis *is* relevant. In fact, Groups I and II are classified in different areas (600/407 and 600/9) for that very reason (where *obtaining* an electromagnetic spectrum is specifically classified in 600/407). The examiner also points out that only use of the apparatus for a different method need be shown. The requirement is still deemed proper and is therefore made FINAL.

***Drawings***

2. The drawings are objected to because it is difficult to read the text in figures 1 and 2. The examiner strongly suggests updating the figures with typewritten text that is adequately spaced within the boxes. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from

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the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 3 is objected to because of the following informalities: Regarding claim 3 line 3, it appears that —digitized—should be inserted between "storing" and "homeopathic" to enable a connection between steps (a) and (b).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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Regarding claims 1, 2, 10 and 11, the disclosure does not adequately disclose how electromagnetic (EM) spectra containing "homeopathic" information is obtained and stored in music compression format. Although the present invention admits that it is known to obtain and store low frequency (0-22 KHz) homeopathic EM spectra as disclosed in previous patent (5,830,140 to Dillinger et al. – not expressly incorporated by reference), the *current* specification does not set forth any procedures for obtaining an analog electromagnetic spectrum representing homeopathic information - but rather appears to be concerned with accessing *previously obtained data* from a network data bank. In addition, the present disclosure does not address how obtained *long wave* electromagnetic spectra (current specification p. 3 lines 19-22) are stored in music compression format. For example, Dillinger superimposes the electromagnetic spectra on a carrier wave (such as 10 Hz), however the present disclosure does not address whether the digitized electromagnetic spectra is converted to a higher frequency or superimposed on a carrier wave (analogous to Dillinger) so as to be stored in MP3 format, or music compression format for that matter.

Regarding claims 1-11, the specification does not adequately disclose what wavelengths are obtained and applied for "homeopathic" therapy. Except for 5,830,140 (which is not expressly incorporated by reference), there is no mention whatsoever of specific wavelengths suitable for the present invention. For example, what wavelengths correspond to treatment of stress, digestive, disorders, headaches, etc.? It is further unclear whether the wavelengths used are similar or different from those used in the '140 patent.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dillinger et al. of record in view of Kim.

Regarding claim 1, Dillinger et al. shows that it is known to obtain and store electromagnetic information representing homeopathic information in digital format for later reproduction and direct therapy by stimulation of e.g., sensory organs (col. 2 lines 3-9, col. 5 lines 4-13) wherein the characteristic information is superimposed on carrier waves (col. 4 line 63 – col. 5 line 1). Dillinger et al. differs from the claimed invention in that storage/reproduction of the electromagnetic information in compressed musical format is not specifically addressed. Kim demonstrates that it is known to stimulate sensory organs via (computer reproduced) music for therapy (e.g., stress relief, etc.) based on a physiological indication (col. 3 lines 52-54). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to modify the carrier waves of Dillinger et al. to mere higher frequency (audio) carrier waves for music therapy as taught by Kim for effective natural therapy of sensory organs and relief of stress as is known in the art.

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music therapy as taught by Kim for effective natural therapy of sensory organs and relief of stress as is known in the art.

Regarding claims 3-9, Dillinger et al. shows that it is known to obtain and store electromagnetic information representing homeopathic information in digital format (e.g., CD-ROM) for later reproduction and therapy by stimulation of e.g., sensory organs (col. 2 lines 3-9, col. 5 lines 4-13) wherein the characteristic information is superimposed on carrier waves (col. 4 line 63 – col. 5 line 1) and applied either directly or e.g., to electrodes in a liquid. Dillinger et al. also discloses wherein the data may first be digitally summed and weighted by the digital processor (col. 3 lines 40-47). Dillinger et al. differ from the claimed invention in that storage/access of the electromagnetic information via a global computer network is not specifically addressed. Kim demonstrates that it is known to use computer reproduced digital information for naturopathic therapy (e.g., stress relief, etc.) based on a physiological indication (col. 3 lines 52-54). Kim further discloses wherein the digital data may be accessed/transferred via the Internet (col. 2 lines 40-44, col. 3 lines 58-60) and selected from a home page (70). See also col. 5 line 49 – col. 6 line 35. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to store/access the digital information of Dillinger et al. via a web page and the Internet as taught by Kim (as opposed to a CD-ROM) for increased user access and availability to most recently updated programs.

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Regarding claim 10, it would have been obvious at the time the invention was made to a person of ordinary skill in the art to modify the carrier waves of Dillinger et al. to higher frequency (audio) carrier waves for direct music therapy as applied to claim 1 above.

6. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dillinger in view of Kim and further in view of Kehr et al.

Regarding claims 2 and 11, although Kim et al. disclose accessing music for therapy over the Internet, MP3 format is not addressed explicitly. Kehr et al. generally demonstrates that it is well known to use MP3 format for storage and retrieval of music over the Internet e.g., [0274]. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to use MP3 format in the invention as taught by Dillinger in view of Kim for effective transfer of music over the Internet as is well known in the art.

### ***Conclusion***

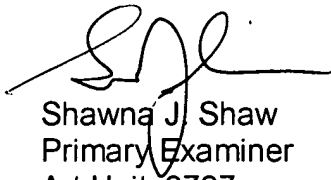
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawna J. Shaw whose telephone number is (703) 308-2985. The examiner can normally be reached on 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shawna J. Shaw  
Primary Examiner  
Art Unit: 3737  
10/25/2004